

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

19 Cr. 118 (RA)

5 JESUS WILFREDO ENCARNACION,

6 Defendant.

Arraignment

7  
8 New York, N.Y.  
9 February 28, 2019  
11:00 a.m.

10 Before:

11 HON. RONNIE ABRAMS,

12 District Judge

13 APPEARANCES

14 GEOFFREY S. BERMAN

15 United States Attorney for the  
Southern District of New York

16 BY: DAVID DENTON

KIMBERLY RAVENER

17 Assistant United States Attorneys

18 FEDERAL DEFENDERS OF NEW YORK

Attorneys for Defendant

19 BY: SARAH J. BAUMGARTEL

1 (Case called)

2 MR. DENTON: Good morning, your Honor, David Denton  
3 and Kimberly Ravener for the government. With us is Jonathan  
4 Concepcion, paralegal from our office.

5 MS. BAUMGARTEL: Good morning, your Honor, Sarah  
6 Baumgartel from the Federal Defenders, on behalf of  
7 Mr. Encarnacion.

8 THE COURT: Good morning to both of you. We are here  
9 to arraign Mr. Encarnacion on the indictment. It's 19 Cr. 118.  
10 It was filed on February 21.

11 The indictment charges you with two counts. Count One  
12 charges you with attempted provision of material support and  
13 resources to a designated foreign terrorist organization, and  
14 Count Two charges you with conspiracy to provide material  
15 support and resources to a designated foreign terrorist  
16 organization. The indictment also contains a forfeiture  
17 allegation.

18 I'd like you to stand, please.

19 Have you seen a copy of this indictment? Have you  
20 read it?

21 THE DEFENDANT: Yes.

22 THE COURT: Have you discussed it with your attorney?

23 THE DEFENDANT: Yes.

24 THE COURT: Would you like me to read it out loud here  
25 in court or do you waive its public reading?

1 THE DEFENDANT: No.

2 THE COURT: How do you plead to the charges?

3 THE DEFENDANT: Not guilty.

4 THE COURT: You can be seated.

5 What's the status of discovery and what does it  
6 entail?

7 MR. DENTON: Your Honor, we are discussing a  
8 protective order with defense counsel in this case with respect  
9 to some aspects of the discovery. There are three tranches of  
10 discovery that the government is aware of right now.

11 There is material that we will be able to produce  
12 immediately, as soon as the protective order is available.

13 There is a second set of discovery which is material  
14 that was obtained from accounts and devices of other people  
15 which we are in the process of addressing sort of privacy and  
16 overproduction concerns. That will go out shortly thereafter.

17 And then, finally, there is a set of discovery which  
18 is currently classified and is in the process of being  
19 declassified. We expect that will be done probably within the  
20 next month, but it's a little hard to predict since that's not  
21 a process that we control.

22 THE COURT: In terms of timing, aside from what you  
23 said at the end with respect to the month or so that you expect  
24 the declassification process to take, after you sign the  
25 protective order, how long do you think it will take you to

1 produce the remainder of discovery?

2 MR. DENTON: I think the bulk of it will go out  
3 probably within a day or so. We have largely got it assembled  
4 and marked already.

5 The second tranche, like I said, we have to complete  
6 doing some review for privacy concerns, but that information is  
7 all assembled and ready. So I would think that would probably  
8 take another week or so.

9 THE COURT: Thank you.

10 Ms. Baumgartel, what would you propose in terms of  
11 next steps when we should meet again?

12 MS. BAUMGARTEL: Your Honor, I don't have a good sense  
13 of the volume of the discovery from the government, but it may  
14 make sense to come back in approximately 45 or 60 days, by  
15 which point we should have received all of it and had at least  
16 a preliminary opportunity to review it, if not make a more  
17 complete review and would be in a position to propose a  
18 schedule for motions.

19 THE COURT: Why don't we schedule it for 45 days out.  
20 But if you feel like at that juncture you are not yet in a  
21 position to set a schedule going forward, why don't you let me  
22 know, submit a letter, and we can put it off for another few  
23 weeks. Whatever you propose in terms of timing is fine with  
24 me.

25 THE DEPUTY CLERK: April 11 at 10:30.

1 THE COURT: Is that OK with everyone?

2 MR. DENTON: Yes, your Honor. That works for the  
3 government.

4 MS. BAUMGARTEL: Yes.

5 THE COURT: Does the government seek to exclude time  
6 under the Speedy Trial Act?

7 MR. DENTON: We do, your Honor. In order to  
8 facilitate the production of somewhat complicated discovery and  
9 for the defense to review it and consider any motions they may  
10 wish to make.

11 THE COURT: Any objection?

12 MS. BAUMGARTEL: There is no objection.

13 THE COURT: I'll exclude time from today until April  
14 11, pursuant to 18 United States Code Section 3161(h)(7)(A). I  
15 find that the ends of justice served by excluding such time  
16 outweigh the interests of the defendant and the public in a  
17 speedy trial because it will allow time for the defense to  
18 review discovery and consider any motions that he may choose to  
19 make.

20 At that conference, when we meet again, I will want to  
21 schedule a trial date and a motion schedule, so please just be  
22 prepared for that.

23 Are there any other applications?

24 MR. DENTON: No, your Honor. We just wanted to alert  
25 the Court that we expect also that the government will file a

1 motion pursuant to the Classified Information Procedures Act in  
2 this case. We have been in touch with Dan Hartenstine, the  
3 information security officer. We let defense counsel know that  
4 we expect that's coming. We will work with Mr. Hartenstine to  
5 schedule a section 2 conference to address that and a schedule  
6 for that motion.

7 THE COURT: Thanks.

8 What is your classification, Ms. Baumgartel? Are you  
9 cleared?

10 MS. BAUMGARTELG: No, unfortunately. I'll have to go  
11 through that process.

12 THE COURT: There are other folks at the Federal  
13 Defenders who of course are and can assist on this.

14 MS. BAUMGARTEL: There are, yes.

15 THE COURT: Thanks. I'll keep an eye out for the  
16 protective order. We will see each other in April unless I get  
17 a letter before then.

18 Are there any other applications?

19 MR. DENTON: Not from the government.

20 MS. BAUMGARTEL: One issue of behalf of the defendant.  
21 Mr. Encarnacion was first detained on February 8. Since that  
22 time he has only been permitted a single phone call with his  
23 family. He has not been permitted yet to make any legal phone  
24 calls. He has not been permitted yet to have any family visits  
25 and initially was not even permitted legal visits. This is

1 something that I've been in correspondence about with the MCC's  
2 legal department, but I may make an application to the Court at  
3 some point.

4 THE COURT: Are there special administrative measures  
5 in place for him?

6 MS. BAUMGARTEL: No. I don't know what the issue is.  
7 MCC has not raised any security concerns. I don't know why he  
8 is not able to call his family. But he is an individual with  
9 very serious mental health issues and his inability to have  
10 contact with his family, I'm concerned, is going to lead to  
11 decompensation. And so I am going to confer with the  
12 government. I may be making some application to the Court if I  
13 can't resolve this with the MCC's legal department.

14 THE COURT: As you suggested, I do want you to confer  
15 with the government first and see if we can work something out,  
16 and the government can always reach out to the facility as  
17 well. But if not, we will address it.

18 MS. BAUMGARTEL: I will. Thank you.

19 THE COURT: Thank you.

20 (Adjourned)  
21  
22  
23  
24  
25